

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ALCIDES RODRÍGUEZ-DURÁN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 08-2297 (JAF)

(Crim. No. 05-309)

ORDER

Petitioner, Alcides Rodríguez-Durán, requests a certificate of appealability ("COA") from this court to appeal our denial of his 28 U.S.C. § 2255 petition. (Docket No. 11.)

To appeal a final order of the district court in a § 2255 proceeding, a petitioner must first obtain a COA, 28 U.S.C. § 2253(c)(1)(B), which may issue from the district court, Grant-Chase v. Comm'r, N.H. Dep't of Corr., 145 F.3d 431, 435 (1st Cir. 1998). We grant a COA only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

On October 28, 2005, Petitioner was convicted of violations of the Maritime Drug Law Enforcement Act ("MDLEA"). (Crim. No. 05-309, Docket No. 133.) He and his codefendants unsuccessfully challenged their convictions in a consolidated appeal. United States v. Rodríguez-Durán, 507 F.3d 749 (1st Cir. 2007). Petitioner

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1 subsequently moved this court for relief under § 2255, alleging lack
2 of jurisdiction and other constitutional infirmities at trial.
3 (Docket No. 1.) Petitioner argued that the government must
4 demonstrate a nexus between the United States and the alleged crime
5 as a prerequisite to subject-matter jurisdiction under the MDLEA.
6 (Docket No. 1-2.) Relying on the "law of the case" doctrine, we
7 denied Petitioner's jurisdictional claim because it was an issue that
8 previously had been argued and decided on a codefendant's direct
9 appeal. (Docket No. 9.) The First Circuit, addressing codefendant
10 Morelis-Escalona's argument on direct appeal, held that if the flag
11 nation has consented to jurisdiction, then due process does not
12 demand such a nexus as a prerequisite to subject-matter jurisdiction
13 under the MDLEA. Rodríguez-Durán, 507 F.3d at 761.

14 In the present application for COA, Petitioner argues that we
15 misapplied the "law of the case" doctrine when we denied his
16 jurisdictional claim. (Id.) Petitioner attempts to differentiate
17 his claim from the claim decided on appeal; he challenges the
18 constitutionality of the First Circuit jurisprudence rejecting a
19 nexus requirement, whereas Morelis-Escalona claimed that the
20 government had not presented sufficient evidence to establish such a
21 nexus. (Docket No. 11 at 3-4.) This distinction is illusory.

22 The Court of Appeals disposed of Morelis-Escalona's claim with
23 a clear statement of the constitutionality of MDLEA subject-matter
24 jurisdiction. Rodríguez-Durán, 507 F.3d at 761. The First Circuit,
25 citing a decade's worth of jurisprudence, directly quoted the
26 following language: "[D]ue process does not require the government to
27 prove a nexus between a defendant's criminal conduct and the United

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1 States in a prosecution under the MDLEA when the flag nation has
2 consented to the application of United States law to the defendants."
3 Id. at 762 (quoting United States v. Cardales, 168 F.3d 548, 553 (1st
4 Cir. 1999)). Thus, the consolidated appeal of Petitioner's conviction
5 clearly established the "law of the case" regarding the
6 constitutional question at issue - whether, despite a flag nation's
7 consent, due process requires a nexus between the crime alleged and
8 the United States before jurisdiction may attach under the MDLEA.
9 Consequently, Petitioner's § 2255 claim that MDLEA jurisdiction
10 without a nexus necessarily violates constitutional due process was
11 foreclosed. Because our denial of this jurisdictional claim followed
12 clearly-established precedent (Docket No. 9), reasonable jurists
13 would not find our assessment of the constitutional claims in
14 Petitioner's § 2255 petition to be debatable or wrong. See Miller-
15 El, 537 U.S. at 338.

16 Accordingly, we hereby **DENY** Petitioner's request for a COA under
17 28 U.S.C. § 2253 (Docket No. 11).

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 23rd day of November, 2009.

20 S/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 Chief U.S. District Judge